IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 550 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

KISHORESINH @ KABHAI MALUJI CHAUHAN

Appearance:

1. Special Criminal Application No. 550 of 2000

MR SS PATEL, APP for Petitioner No. 1

MR KJ SHETHNA for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/04/2002

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. counsel Mr. K.J.Shethna for respondent accused. With the consent of the parties, the matter is taken up for final hearing today.

2. Today, vide oral judgment, this Court has disposed of Criminal Misc. Application No. 2997/2000 preferred by the State for cancellation of bail, against the respondent.

3. I have carefully considered the report of Investigating Officer placed before the ld. JMFC whereby police remand was asked. The order passed by ld. Addl. Sessions Judge, Vadodara while dealing with Criminal Revision Application No. 76/2000 on 17.5.2000 is also on record, wherein ld. Addl. Sessions Judge has observed that the order rejecting remand application is in accordance with law and no further grant of police remand is required. During the course of hearing of this application, responsible officer from Investigating Agency who is present in the Court, has accepted that necessary panchanamas to get handwritings of the accused has been drawn. Most relevant documents are already seized and recovered by the Investigating Agency. It is submitted that the police has yet not found out Mr. Mahendra Shah who is one of the co-accused and party in creating fraudulent will and subsequent proceedings. It would not be logical or otherwise legal to hold that police remand would, in any way, help the Investigating Officer in tracing out Mr. Mahendra Shah. This Court is also not satisfied that for these two years police has made all efforts to trace out and arrest Mr. Mahendra Shah. It is told that signatures below application preferred before Talati-cum-Mantri to get the land survey No. 36/1 mutated in the name of the respondent accused and co-accused Mr. Mahendra Shah, were sent to handwriting expert and Investigating Agency has already received opinion and the same is positive. It would be illogical to say that police remand would help, in any way, to the Investigating Officer in tracing out the name of actual writer of the will. This indication could have been extracted during first interrogation. In short, I am in agreement with the order passed by ld. JMFC and ld. Addl. Sessions Judge.

4. State of Gujarat was not legally entitled to move second revision and, therefore, this course of filing Special Criminal Application (i.e. writ petition) has been adopted. I do not find any merits warranting this Court to exercise supervisory jurisdiction under Article 227 of the Constitution of India. Both the courts have exercised their jurisdiction properly.

5. Ld. counsel Mr. Shethna has submitted that substantive part of investigation is over and chargesheet

is almost ready and accused who has been granted bail by the competent court and request to cancel the bail has been rejected and, therefore, it would not be justified to hand over the accused again to police custody because its effect would be that bail granted earlier by the competent court would stand automatically cancelled. Period lapsed in-between becomes relevant in some cases and it has so happened in the present case.

6. I agree that as per the decision of this Court in the case of Siyaram Gopichand Gupta & Others v/s State of Gujarat, reported in 1990(2) GLR 905, even after lapse of certain period, if the Court is satisfied that police remand requires to be granted, the same can be granted. However, in the instant case, the facts of the case do not tempt this Court to hold accordingly.

7. For the reasons aforesaid, there is no substance in this Special Criminal Application and the same is hereby dismissed. Rule is discharged.

22.4.2002 [C.K. BUCH, J]
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